

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

|                              |   |                             |
|------------------------------|---|-----------------------------|
| IN RE:                       | ) | Chapter 7 Case              |
|                              | ) | Number <u>96-10795</u>      |
| KEITH W. BENNING             | ) |                             |
|                              | ) |                             |
| Debtor                       | ) | FILED                       |
|                              | ) | at 9 O'clock & 40 min. A.M. |
|                              | ) | Date: 6-26-97               |
| JIM WILSON, Attorney for the | ) |                             |
| Debtor                       | ) |                             |
|                              | ) |                             |
| Movant                       | ) |                             |
|                              | ) |                             |
| vs.                          | ) |                             |
|                              | ) |                             |
| EDWARD J. COLEMAN, III,      | ) |                             |
| CHAPTER 7 TRUSTEE            | ) |                             |
|                              | ) |                             |
| Respondent                   | ) |                             |

**ORDER**

Jim Wilson (hereinafter "Movant"), attorney for Keith W. Benning (hereinafter "Debtor"), asserts an administrative expense claim for his fees incurred in his representation of the Debtor in this Chapter 7 case. The Chapter 7 Trustee, Edward Coleman, III (hereinafter "Trustee") objected to the amount of the Movant's fees and Movant's assertion of an administrative expense priority claim. At hearing, the Movant voluntarily reduced his fee application from

\$3,375.00 to \$2,375.00, thereby settling the Trustee's objection to the amount. However, a dispute remains concerning whether Movant's fee claim is entitled to administrative expense priority. Movant's fees are allowed at \$2,375.00, but the request for administrative priority is denied.

Movant seeks payment of his attorney's fees as an administrative expense under 11 U.S.C. §503(b)(2) which refers to compensation allowed under 11 U.S.C. §330(a).

11 U.S.C. §503 provides in material part:

An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

...

(2) compensation and reimbursement awarded under section 330(a) of this title;

11 U.S.C. §330(a) provides in material part:

(a) (1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

...

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

or

(II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

...

Prior to the 1994 amendments, §330(a) provided:

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 327, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, **or to the debtor's attorney—**

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparative services other than in a case under this title;

... (emphasis added)

Notably, Congress deleted from §330(a) the general authorization for payment of a debtor's attorney's fees as an administrative expense, but specifically provided that a Chapter 12 or 13 individual debtor's attorney may apply for compensation from the estate under §330(a)(4)(B). A plain reading of these provisions bars the debtor's attorney in a Chapter 7 case from receiving compensation under §330(a). See, In re Fassinger, 191 B.R. 864 (Bankr. D. Or. 1996); In re Friedland, 182 B.R. 576 (Bankr. D. Colo. 1995); In re Kinnemore, 181 B.R. 520 (Bankr. D. Idaho 1995). Additionally, Movant admitted at hearing and in his brief that the services were

provided to the Debtor and not for the benefit of the estate.

It is therefore ORDERED that Movant's claim for attorney's fees is allowed as a general unsecured claim in the amount of \$2,375.00.

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 25th day of June, 1997.